

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.
BENNETT RECEIVABLES CORPORATION
BENNETT RECEIVABLES CORPORATION II
BENNETT MANAGEMENT AND DEVELOPMENT
CORPORATION

Debtors

CASE NO. 96-61376
96-61377
96-61378
96-61379

Chapter 11
Jointly Administered

APPEARANCES:

STUART, MAUE, MITCHELL & JAMES, LTD.
Legal Auditors and Consultants
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10 Broad Street
Utica, New York 13501

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court considers herein the First Application For Allowance of Interim Compensation and Reimbursement of Expenses ("First Interim Application") of Stuart, Maue, Mitchell & James, Ltd. ("SMMJ").

SMMJ was appointed to act as fee auditor in these jointly administered chapter 11 cases by Order of this Court dated October 15, 1996. Pursuant to that Order, SMMJ was to review and

analyze the fee applications of all professionals appointed in these cases which exceeded the sum of \$100,000.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a), (b)(1) and (b)(2)(A) and (O).

FACTS AND ARGUMENTS

The First Interim Application covers the period October 15, 1996 through January 21, 1997 and seeks a fee of \$140,945 together with expenses of \$3,607.15. At a hearing held before the Court on February 27, 1997, the Court made a provisional award to SMMJ of \$75,000 to be applied to its fees and \$3,607.15 in payment of its expenses.

At said hearing, the Court also heard objections from the United States Trustee (“UST”) and the Official Committee of Unsecured Creditors (“Creditors Committee”) to the First Interim Application.

The UST objects to the rendering of certain “technocratic services” by SMMJ attorneys billing their time at \$175 per hour. The UST observes that the resultant work product is a “software generated statistical analysis of the fee applications submitted.” (See Objection of UST dated 2/13/97 at ¶ 5).

The Creditors Committee professed some difficulty in formulating a response to the First

Interim Application due to the technical nature of SMMJ's services, but did opine that the fee auditor's fees and expenses were "higher than had been anticipated." (*See* Response of Creditors Committee dated February 19, 1997 at ¶ 2).

DISCUSSION

During the period covered by the First Interim Application SMMJ audited five (5) fee applications of various professionals in these jointly administered cases, which applications requested fees and disbursements totaling approximately \$4.46 million.

Clearly, as the UST suggests, much of what SMMJ provides is a statistical analysis consisting of a quantitative, rather than a qualitative analysis, and that is precisely the function of a fee auditor. It is the court, not the auditor that is charged with the task of considering the statistical analysis in light of the mandates of 11 U.S.C. § 330.

In the instant cases, were the Court to attempt the analysis performed by SMMJ, it would find itself overwhelmed by the sheer magnitude of the professional fee applications. The Court finds disingenuous the argument of the UST that the fees sought by SMMJ closely approximate the Court's actual reduction in the fees audited. Such a conclusion begs the real question - that being, what effective statistical analysis of the numerous fee applications could this Court perform given the overall size and complexity of a case with thousands of creditors, over one billion dollars in debt and dubbed the largest "ponzi" scheme in U.S. history?

The Court does believe, however, that SMMJ may be performing an analysis that examines the fee applications filed by professionals in a manner that goes beyond the needs of

the Court at this time. Time spent detailing work in various project categories such as “Adversary Proceedings” and “ Entries For Strategy Formulation, Review & Revision” is unnecessarily lengthy and can be eliminated by providing summaries. Many of these project categories will only become relevant further on in these cases when the results are more clearly defined. Additionally, the Court questions the need for 51.12% of the total hours consumed in the First Interim Application to have been those of attorneys affiliated with SMMJ. While clearly even a statistical analysis of a fee application requires a certain degree of legal expertise in categorizing the nature of services, it would appear that such tasks should be a relatively minor percentage of overall time.¹

While the Court makes no adjustments to the First Interim Application, it expects that SMMJ will heed the observations set out herein. Failure to do so will result in significant adjustments to future fee applications.

Based upon the foregoing, it is

ORDERED that the fees and expenses requested by SMMJ in its First Interim Application in these jointly administered cases are allowed in the amount of \$140,945 in fees and \$3,607.15 in expenses; and it is

ORDERED that the above fees and expenses shall be reduced by the \$78,607.15 provisionally awarded to SMMJ at the hearing on February 27, 1997; and it is finally

ORDERED that payment of the allowed fees and expenses, including any portion of the

¹ The UST calculates \$56,000 of attorney hours that she asserts should have been expended by para-professionals billing at a significantly lower rate.

above mentioned provision award, shall not be made from encumbered assets of these estates.

Dated at Utica, New York

this 19th day of May 1997

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge